

MEMORANDUM of UNDERSTANDING
Between
THE TEXAS JUVENILE JUSTICE DEPARTMENT
and
THE TEXAS POLICY LAB

This Memorandum of Understanding (“MOU”) is between the Texas Juvenile Justice Department (hereinafter referred to as “TJJD”), and Rice University, a non-profit organization, with its principal offices at 6100 Main Street, MS-531, Houston, Texas 77005, (Rice) on behalf of The Texas Policy Lab (“TPL”), each individually referred to as a “Party,” and collectively as the “Parties.”

I. PURPOSE

- a. TPL aims to assist state and local governments and agencies in improving the program and services they provide to Texans using rigorous, data-driven, scientific evaluations. TPL translates the technical expertise of its staff and affiliate faculty into relevant, timely and robust program and service evaluations from which governments and agencies can benefit; and
- b. TJJD is a Texas state agency that manages state-operated secure facilities and halfway houses for youth offenders and aims to better serve the citizens of Texas by reducing future crime, keeping youth offenders as shallow in the system as is appropriate, and holding youth accountable for behavior and intervening that behavior with pragmatic, science, and evidence-based approaches; and
- c. The purpose of this MOU is to outline the terms and conditions agreed to by the Parties regarding the provision of Data from TJJD to TPL for consultation and collaboration purposes. No Data shall be provided by TJJD to TPL without the written approval of TJJD’s Executive Director for each project Statement of Work submitted by TPL.
- d. Research planned by TPL that involves generalizable research on human subjects shall be submitted by TPL, in advance of any research being conducted, to a Rice Institutional Review Board (Board) for human subject research and Board approval is required before TPL begins any human subject research.

II. TERM OF MOU

- a. This MOU shall be effective upon execution by both Parties (“Effective Date”), and continue for a period of ten (10) years, reviewed and updated if necessary in five (5) years, unless terminated by either Party pursuant to Section VIII.

III. DEFINITIONS

- a. "Aggregate Level Data" means Data that is received or created by TPL that includes summary statistics of information related to groups of individuals or observations. Such Data does not contain Sensitive Personal Information.
- b. "Breach" shall have the meaning given such term under 45 C.F.R. § 164.402 as such regulation is revised from time to time.
- c. "Breach of System Security" means unauthorized acquisition of computerized data that compromises the security, confidentiality, or integrity of Sensitive Personal Information maintained by a person, including data that is encrypted if the person accessing the data has the key required to decrypt the data.
- d. "Data" means the information to be provided by TJJD to TPL that is described in a Statement of Work. Data may be collected through a partnership between TJJD and the TPL or may be administrative and collected before a project effective date. Data may only be provided by TJJD pursuant to the requirements of Texas Family Code Section 58.005.
- e. "Data Linking" means, with respect to Data created or received by TPL, the combining of such Data by TPL with the data received by TPL of another data owner, to permit data analyses that relate to the operations of the respective data owners.
- f. "FERPA" means the Family Educational Rights and Privacy Act, 20 U.S.C. §1232g.
- g. "FERPA Regulations" means the regulations promulgated by the United States Department of Education under FERPA including, but not limited to, 34 CFR Part 99.
- h. "HIPAA" means the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191.
- i. "HIPAA Regulations" means the regulations promulgated under HIPAA by the United States Department of Health and Human Services including, but not limited to, 45 C.F.R. Part 160 and 45 C.F.R. Part 164 subparts A and E ("The Privacy Rule") and the Security Standards as they may be amended from time to time, 45 C.F.R. Parts 160, 162 and 164, Subpart C ("The Security Rule").
- j. "HITECH Act" means the provisions of Division A, Title XIII of the American Recovery and Reinvestment Act of 2009, known as The Health Information Technology for Economic and Clinical Health, Act 42 U.S.C. §3000 et. seq., and implementing regulations and guidance, including the regulations implemented in 78 Fed. Reg. 5566 (January 25, 2013).

- k. "Individually Identifiable Health Information" means information that is a subset of health information, including demographic information collected from an individual, and:
- i. is created or received by a health care provider, health plan, employer, or health care clearinghouse; and
 - ii. relates to past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and
 1. that identifies the individual; or
 2. with respect to which there is a reasonable basis to believe the information can be used to identify the individual.
- l. "MRPA" means Texas Medical Records Privacy Act, as codified in Section 181 et seq. of the Texas Health and Safety Code and as implemented through regulations including the Standards Relating to the Electronic Exchange of Health Information, codified at Title 1, Section 390.1 et seq. of the Texas Administrative Code.
- m. "Protected Health Information" or "PHI" means Individually Identifiable Health Information that is transmitted by electronic media; maintained in any medium described in the definition of the term electronic media in the HIPAA Regulations; or transmitted or maintained in any other form or medium. The term excludes Individually Identifiable Health Information in educational records covered by the Family Educational Right and Privacy Act, as amended, 20 U.S.C. § 1232g; records described at 20 U.S.C. § 1232g(a)(4)(B)(iv); and employment records held by a Covered Entity in its role as employer and regarding a person who has been deceased more than 50 years.
- n. "Security Incident" means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with systems operations in an information system, but does not include minor incidents that occur on a routine basis, such as scans, "pings", or unsuccessful random attempts to penetrate computer networks or servers maintained by TPL.
- o. "Sensitive Personal Information" means: (1) an individual's first name or first initial and last name in combination with any one or more of the following items, if the name and the items are not encrypted: (a) social security number; (b) driver's license number or government-issued identification number; (c) account number or credit or debit card number in combination with any required security code, access, code, or password that would permit access to an individual's financial account; or (2) PHI information that identifies an individual and relates to: (a) the physical or mental health or condition of the individual; (b) the provision of health care to the individual; or (c) payment for the provision of health care to the individual.

- p. "Statement of Work" means the document(s) attached as an Exhibit(s) to this MOU that describe the work approved in writing by TJJD's Executive Director to be provided by TPL and how any Data provided by TJJD to TPL shall be used.

IV. STATEMENT OF WORK

TPL shall submit a Statement of Work (SOW), using Attachment 1 as a template, for each project with TJJD to TJJD's Executive Director for written approval. The SOW shall describe the project purpose(s), provide project description and details, and indicate the Data being sought to meet the project purpose(s). A Statement of Data Security (discussed below), see Attachment 2, will accompany the SOW, and the submission, if approved, will become an Exhibit to this MOU.

V. LICENSE GRANT

- a. To the extent TJJD has an ownership interest in the Data or copyright to the Data, in order for TPL to conduct the project described in the SOW and only for TPL to conduct the project described in the SOW, TJJD grants TPL a perpetual, irrevocable, royalty-free license to:
 - i. Reproduce the Data within the secure TPL data infrastructure;
 - ii. Prepare derivative works from the Data within the secure TPL data infrastructure;
 - iii. Distribute copies of the Data and of derivative works from the Data within the secure TPL data infrastructure;
 - iv. Display the Data, including through electronic means within the secure TPL data infrastructure; and
 - v. Use the unidentifiable Data and publish the results.

VI. CONFIDENTIALITY, DATA SECURITY, AND DATA ACCESS

- a. TPL hereby acknowledges the confidential nature of the information disclosed and agrees to comply with each and every restriction and obligation set forth herein. TPL further acknowledges and agrees that the disclosure of information by TJJD does not constitute a waiver of any applicable provisions or exceptions to disclosure under Chapter 58 of the Texas Family Code or Chapter 552 of the Texas Government Code, the Public Information Act.
- b. With each SOW, TPL shall provide TJJD a separate written statement (Statement of Data Security) of the administrative and physical precautions that will be taken to securely protect any data deemed confidential pursuant to this MOU and/or statutory law. The Statement of Data Security will be attached to the SOW and included as part of the project Exhibit to this MOU.
 - i. For each SOW, TPL shall:

1. Use the Data provided only for the research, evaluative, and/or statistical purposes described in the SOW;
2. Limit access to the Data to those individual staff, faculty, students, employees, or associates whose responsibilities cannot be accomplished without such access;
3. Replace any and all identifying information of any record subject with an alphanumeric or other appropriate code, as applicable;
4. Immediately notify TJJD of any material changes in the purposes or objectives of the SOW or in the manner in which the Data will be used;
5. Prohibit the disclosure of Data in any form which identifies an individual, as applicable;
6. Prohibit the disclosure, access, distribution, review, copying, or duplication of Data provided other than for the stated research, evaluative, and/or statistical purpose of the SOW;
7. Secure a written agreement that contains a provision that restricts removal and portability of Data by a staff member, student, faculty member, employee, or associate after his or her affiliation, association, or employment has ended; and
8. Provide a draft copy of the research report, article, or publication prior to dissemination.

ii. For each SOW, TPL shall not:

1. Disclose any of the Data in a form which is identifiable to an individual in any project report or in any other manner whatsoever; or
2. Make copies of any of the Data provided other than what is absolutely necessary for research, evaluative, and/or statistical purposes or directly or indirectly transfer, disseminate, or disclose data files, electronic data, physical records, or copies of any information to any person, firm, other business, or governmental entity for any purpose without TJJD's prior written consent.

iii. In the event that TPL deems it necessary, for purposes consistent with this MOU, to disclose the Data to any other person or entity, including, but not limited to, researchers (including student researchers), associates, collaborators, and/or subcontractors, TPL shall:

1. Secure the written agreement of any such person or entity to comply with all terms of this MOU as if they were named herein;
2. Notify TJJD of the person or entity being provided Data through execution of said agreement; and
3. Notify TJJD, as soon as commercially reasonable, of any modification to the parties, providers, or subcontractors using the Data for the stated purpose(s) of the SOW.

- c. TJJD shall transfer Data to TPL in a secure manner, such as secure file transfer protocol, an encrypted cloud-based solution, or an encrypted hard drive.
- d. Data shall be stored on TPL's secure data infrastructure. Data shall be analyzed on TPL's data infrastructure only, using thin clients on authorized remote machines. The TPL data infrastructure is kept in a locked room with two-factor authentication, in a building that is monitored 24 hours per day, with guard response. TPL also employs a disaster recovery plan that requires storing back up versions of the data in safe, locked rooms with two-factor authentication in a building that is monitored 24 hours per day, with guard response.
- e. TPL shall comply, at a minimum, with recommended security standards at the Rice University campus.
- f. In the event of a Breach or Breach of Security System, TPL shall, as soon as practicable but not more than five (5) business days after becoming aware of any successful Security Incident or use or disclosure of TJJD's FERPA data, PHI, or Sensitive Personal Information in violation of this MOU, report any such use or disclosure to TJJD.
- g. TPL shall not access and use the Data except to accomplish the purpose described in the SOW, or for administrative purposes related to data security.
- h. TPL may use any Data received from TJJD in order to provide Data Linking services relating to the purpose described in each project SOW only with TJJD's written permission
- i. TPL shall strictly limit the number of TPL staff, faculty, students, and affiliates who have access to the Data to those necessary to accomplish the purpose described in each project SOW, or for administrative purposes related to data security ("Authorized Users"). TPL shall maintain a log establishing an audit trail of who has accessed the Data.
- j. TPL shall be responsible for ensuring that all Authorized Users adhere to the confidentiality, disclosure, transmission, destruction, storage of, and access to the Data described in this MOU.
- k. TPL shall instruct all its staff and affiliates about the requirements for handling any Data, and about the potential sanctions for unauthorized disclosure or use of this Data. TPL shall ensure that Authorized Users have been informed of the procedures they must follow to maintain the confidentiality of the Data and that unauthorized dissemination or use of the Data may be a crime and could lead to civil and criminal penalties. TPL shall report to TJJD any unauthorized use or disclosure of the information of which it becomes aware.

- l. TPL shall not merge, match, or link any of the Data provided by TJJD with any other confidential data, unless specifically expressed in a SOW description(s).
- m. The Parties acknowledge that various federal and state laws, including FERPA, FERPA regulations, HIPAA, HIPAA Regulations, the HITECH Act, and the MRPA, protect TJJD's Data from unauthorized disclosure and it is the Parties' intent to ensure that the provision and use of such Data between the Parties is done in compliance with those laws.

VII. PUBLICATIONS AND REPORTS

- a. TPL shall be free to distribute and publish research results and other products of its projects with TJJD in works such as academic journals, books, online publications, unpublished working papers, and reports, materials and information included in presentations for academic seminars and conferences derived from ("Publications"), based on or using the Data, but only after TJJD has had an opportunity to review as described in this Section VIII.
- b. TPL shall recognize the contribution of TJJD in all written or oral public disclosures concerning TPL's research using the Data, as appropriate in accordance with scholarly standards. Such recognition shall also include a disclaimer to the effect that published material does not necessarily reflect the views of TJJD.
- c. TPL shall only include Aggregate Level Data in any Publications based on the Data provided by TJJD. No research results shall be reported in a manner that permits direct or indirect identification of any individual. TPL shall not put in any Publication information describing a group of persons numbering fewer than five (5). This minimum cell size is intended to maintain the confidentiality of potentially re-identifiable subgroups.
- d. TPL shall submit to TJJD for review and comment any Publications intended for publication, release, and/or dissemination, and TJJD shall keep such proposed Publication confidential for a period of one (1) year or until the Publication is released publicly, whichever date is earlier. TJJD shall have thirty (30) days for its review of the Publication to ensure that no Data is released that permits direct or indirect identification of any individual. TJJD will make every effort to work with TPL to resolve outstanding questions. TPL shall interpret the absence of feedback from TJJD within that thirty (30) day period that no Data has been identified in the Publication that may permit direct or indirect identification of any individual and the publication may be published, released and/or disseminated as originally written.

VIII. TERMINATION OF MOU

- a. This MOU shall expire as of the date described in Section II, unless extended by agreement of the Parties or terminated earlier under this Section VIII. Either Party may terminate this MOU for any reason upon sixty (60) days prior written notice to the other Party.
- b. Upon termination or expiration (subject to Section II) of this MOU, TJJD shall instruct TPL in writing to either retain, return, or destroy the Data to TJJD. TPL shall make all commercially reasonable efforts to comply within sixty (60) days from the date of notification, provided, however, that TPL may retain one (1) copy of the Data to the extent necessary to comply with the records retention requirements under any law or regulation and for the purposes of research integrity and verification. However, if a project in process is terminated pursuant to violation of the applicable Research MOU, the termination requirements of the Research MOU shall apply to said project.
- c. In the event that TPL fails to comply with any term of this MOU or any associated SOW, TJJD shall have the right to take such actions as it deems appropriate, including termination of this MOU. If TJJD terminates this MOU, TPL (or any person or entity granted access to the information and/or data) shall return all Data to TJJD, including all originals, copies, extracts, or other forms and/or formats. The confidentiality provisions contained herein shall survive upon termination of the MOU.

IX. GENERAL TERMS

- a. **RIGHT TO MONITOR ACTIVITIES.** TPL agrees that TJJD shall have the right, at any time, to monitor, audit, and/or review the activities and policies of TPL (or any person or entity granted access to Data under Section VI.b.iii., above or elsewhere in this MOU) in order to assure compliance with this MOU.
- b. **PROPERTY RIGHTS.** Any patentable product, process, or idea that results from the performance of this MOU and/or any associated SOW becomes the property of both TJJD and Rice as co-owners.
- c. **NO REPRESENTATIONS AND WARRANTIES.** TJJD warrants that it has the right to disclose the Data to TPL. All Data are provided "as is." Except as provided in the first sentence of this paragraph, TJJD makes no representation or warranty, express or implied, regarding the Data's accuracy, completeness or use. There are no express or implied warranties of merchantability or fitness for a particular purpose, or that the use of the data will not infringe any patent, copyright, trademark, or other proprietary rights. TPL acknowledges and agrees that TJJD shall not be responsible for TPL's reliance on the Data provided. TPL make no representations or warranties of any kind concerning the research and publications and disclaim all representations and warranties, express or implied, including, without limitation, warranties of merchantability, fitness for a particular purpose, and noninfringement of intellectual property rights.

- d. **USE OF NAME.** Except as expressly provided in this MOU, neither Party shall use or register the other Party's name (alone or as part of another name) or any logos, seals, insignia or other words, names, symbols or devices that identify the other Party, including any school, unit, division or affiliate ("Names") in any advertisement, press release, or publicity with reference to this MOU or any product or service resulting from this MOU, without the prior written approval of, and in accordance with restrictions required by, an authorized representative of the Party whose name who is to be used. The foregoing notwithstanding, the Parties agree that each Party may respond to legitimate business inquiries with factual information regarding the existence and purpose of the relationship that is the subject of this MOU, without written permission from the other Party. Without limiting the foregoing, each Party shall cease all use of Names of the other Party permitted under this MOU on the termination or expiration of this MOU except as otherwise approved by the other Party.
- e. **LIMITATION OF LIABILITY.** In no event shall either Party be liable to the other for any indirect, punitive, consequential, or special damages, including lost revenues or profits, arising from breach of the terms in this MOU, negligence, strict liability or other tort, or any other cause.
- f. **HOLD HARMLESS.** To the extent permitted by the Constitution and the laws of the state of Texas, TPL shall hold harmless TJJD or any of its employees from any claims damages, or other liability arising as a result of disclosure by TPL of any information or Data received pursuant to this MOU for any acts by TPL which are libelous or slanderous or violates a right of confidentiality.
- g. **GOVERNING LAW, VENUE, and SANCTIONS.** This MOU shall be governed by, and construed in accordance with, the substantive laws of the State of Texas, without giving effect to any choice or conflict of law provision. Any action, suit or other proceeding arising under or relating to this MOU (a "Suit") shall be brought in a court of competent jurisdiction in the appropriate county as dictated by law in the State of Texas. Neither Party waives any immunities from suit or from liability that it may have through operation of law. TPL also acknowledges that failure to comply with the terms of this MOU or an associated SOW, including any misuse or wrongful disclosure, may result in administrative or legal action and may subject TPL to civil or criminal penalties imposed by state or federal law.
- h. **NOTICES.** Any communication under this MOU, excluding transmission of Data, may be delivered in person, by electronic mail, by registered or certified mail, postage prepaid, or by recognized delivery service, to the appropriate addresses listed here:

To TJJD:

Camille Cain

To TPL:

Ekim Cem Muyan

11209 Metric Boulevard
Building H, Suite A
Austin, TX 78758
Camille.Cain@tjtd.texas.gov

Executive Director, Texas Policy Lab
Texas Policy Lab - MS 272
Rice University
P.O. Box 1892
Houston, TX 77251-1892
ekimcmuyan@rice.edu
713.348.2420

Any Notice of Termination must be sent by U.S. mail, return receipt requested, in addition to any other method of transmission.

- i. **INDEPENDENT CONTRACTOR.** The Parties are independent contractors and neither Party shall be deemed to be an agent or employee of the other Party. Neither Party shall have authority to make any statements, representations or commitments of any kind on behalf of the other Party, or to take any action which shall be binding on the other Party.
- j. **ASSIGNMENT.** This MOU and all rights and obligations hereunder shall not be assigned (whether through merger or consolidation, by operation of law, or otherwise), without the written consent of the other Party and any attempt to assign without such consent shall be void.
- k. **MODIFICATION.** No modification or waiver of any provision of this MOU shall be valid unless in writing and executed by duly-authorized representatives of both Parties. A failure by one of the Parties to this MOU to assert its rights hereunder shall not be deemed a waiver of such rights. No such failure or waiver in writing by any one of the Parties hereto with respect to any rights shall extend to or affect any subsequent breach or impair any right consequent thereon.
- l. **SEVERABILITY.** If any provision of this MOU is or becomes invalid or is ruled invalid by any court of competent jurisdiction or is deemed unenforceable, it is the intention of the parties that the remainder of this MOU shall not be affected.
- m. **COUNTERPARTS.** This MOU may be executed in two or more counterparts, and by facsimile or electronic transmission, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.
- n. **ENTIRE AGREEMENT.** Unless otherwise specified, this MOU and any exhibits attached hereto embody the entire understanding between TJJD and TPL for the stated purpose, and any prior or contemporaneous representations, either oral or written, and any prior executed agreements between the Parties, including the Data Use Agreement executed January 14, 2019, are hereby superseded.
- o. **SURVIVAL CLAUSE:** Sections V and VI will survive the termination of this MOU.

X. SIGNATURES. The Parties have executed this Memorandum of Understanding by and through their duly authorized representatives.

Texas Juvenile Justice Department

By: 
Camille Cain, Executive Director

Date: 5/13/19

Rice University Texas Policy Lab

By: Antonio Merlo
Antonio Merlo (May 13, 2019)
Antonio Merlo
Dean of the School of Social Sciences
George A. Peterkin Professor of Economics

Date: May 13, 2019

Attachments

Texas Policy Lab_001[1]

Final Audit Report

2019-05-14

Created:	2019-05-13
By:	Christopher Rodriguez (carod@rice.edu)
Status:	Signed
Transaction ID:	CBJCHBCAABAA4LhLdpeHVajFUmHc-gEFU8nvSVbK41U0

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Signed document emailed to Christopher Rodriguez (carod@rice.edu), ekimcmuyan@rice.edu and Antonio Merlo (amerlo@rice.edu)

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